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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPLICATION NO. 2 OF 2025
IN
ELECTION PETITION NO. 8 OF 2024**

Abhayankar Jagannath Motiram ... Applicant
Meera Co-operative Housing Society,
New Link Road, Near Oshivara Police Station,
Andheri (West), Mumbai 400053.

IN THE MATTER BETWEEN

Subhash Kisan More
Residing at A-104, Shri Ambika Niwas,
Plot No. 41, Sector 42, Seawood (West),
Navi Mumbai – 400 706. ... Petitioner

vs.

1. Abhayankar Jagannath Motiram
Residing at C-1301, Meera Co-operative
Housing Society, New Link Road, Near
Oshivara Police Station, Andheri (West),
Mumbai 400 053.
2. Shivaji Vishnu Nalawade
Residing at Flat No. 305, Boulevard 3,
Wadhava the Address, LBS Road,
Opp. R-City Mall, Ghatkopar(West)
Mumbai 400 086.
3. Vishwajeet Tulshiram Khandare
Residing at Flat No. 302, Murli Manohar
Society, Lal Chakki, Ulhasnagar-4,
District-Thane 421 004.
4. Mr. Arun Bendkhale,
Residing at A-304/B-3, Velentine Apt.(II)
CHS, Ltd., Gen A.K. Vaidya Marg,
Wagheshwari Mandir, Opp. J.V. Compound,
Malad (East), Mumbai 400 097.

5. Ashok Murlidhar Bhandage,
Residing at P-2 Building,
Room No.812, A B Wing,
MMRDA Complex, C.T.S. No. 120,
Karve Nagar, Hariyali Village,
Kanjurmarg East, Mumbai 400 042.
6. Dr. Anand Mahadeo Kasle
Residing at 9 Himgiri, B Wing,
Flat No. 303, Veenanagar Phase 2,
LBS Road, Mulund (West),
Mumbai 400 080.
7. Tanaji Rajabai Keshav Kamble,
Residing at Flat No.1,
Shilpkar Building No.5, Arya Chankya
Nagar, Kandivali(E), Mumbai 400 101.
8. Dhananjay K. Garje,
Residing at 101 Harmony Apts., St. Francis
Road, Vile Parle(West), Mumbai 400 056.
9. Rajesh Narendrabahadur Singh,
Residing at B-108, 104 Lakshmidip Sosa,
Kamalasagar Road, Bhandup Goan(East),
Mumbai 400 042.
10. Shivnath Hiranman Darade,
Residing at C-1/20, Shriram Kapus Kamgar
Society, Kamgar Nagar Road,
Kurla(East) Mumbai 400 024.
11. Shivaji Adnyan Shendge,
Residing at D-44, Shital Kunj,
Shri Prasad Co-op. Hsg. Society Ltd.,
Plot No. 428, RSC-43, Charkop,
Kandivali (W), Mumbai 400 067.
12. Dnyandeo Laxman Hande,

Residing at Flat No. 7, C Wing, Ground
Floor, Bhagirathi Villa, Amrutnagar,
Ghatkopar(West), Mumbai 400 086.

... Respondents

Mr. M.M. Vashi, Senior Advocate a/w. Mr. Prabhakar M. Jadhav, Mr. Shekhar V. Mane, Ms. Suchita Chavan, for Applicant/Original Respondent No.1.

Mr. Rajiv Patil, Senior Advocate i/b. Mr. Sachin S. Punde, for the Petitioner.

CORAM : GAURI GODSE, J.

RESERVED ON : 19th MARCH 2025

PRONOUNCED ON : 9th MAY 2025

JUDGMENT:

BASIC FACTS:

1. This application is filed by respondent no.1 in the election petition. The applicant prays for the rejection of the election petition under Order VII Rule 11 of the Civil Procedure Code, 1908 (“**CPC**”). The election petition is filed under Section 81 of the Representation of the People Act 1951 (“**the 1951 Act**”) to challenge the biennial election of respondent no.1 to the Maharashtra Legislative Council from the Mumbai Teachers Constituency held on 26th June 2024. The election result was declared on 1st July 2024, and the applicant was declared a successful candidate. The petitioner also prays for a

declaration that he be declared duly elected in the election to the said constituency.

2. The petitioner has contended that there were a total of 15,839 voters in the said constituency, out of which 1200 voters exercised their right to vote. There were 402 invalid votes, and the remaining 11598 were considered valid. The petitioner has contended that a quota of 5800 was fixed for the winning candidate. It is further contended that in the first round, the applicant received 3079 first-preferential votes, whereas the petitioner received 3011 first-preferential votes. Thus, the petitioner contended that there was only a difference of 68 votes between the applicant and the petitioner. The petitioner further contended that in the 11th round, i.e. the second last round before declaring the result, the applicant's votes had reached 3642, whereas the petitioner's votes reached 3434, and there was a difference of only 208 votes. The petitioner thus contended that if the election of respondent no.1 in the election petition ("**the applicant**") is declared null and void, the petitioner, being the second highest candidate, would be entitled to be declared elected.

ARGUMENTS FOR REJECTING THE ELECTION PETITION
AT THE THRESHOLD.

3. The application for rejection of the election petition is filed on the ground that the petition raises an objection on the final electoral list, which cannot be made a subject matter of challenge in the election petition. Learned senior counsel for the applicant submitted as under:

- a) In view of the schedule published by the Election Commission, the electoral roll was published on 23rd November 2023. The election commission had published a draft electoral list on 16th October 2023 and 25th October 2023. Until 6th November 2023, time was available to seek any claims or objections to these lists. The last date for nomination was 7th June 2024. Therefore, the objection regarding the addition of ineligible candidates not raised before the last date of filing nomination cannot be made the subject matter of challenge in the election petition. The only exception available to challenge the electoral roll is on the ground that the names were added after the last date of

submission of the nomination. Irrespective of the objections to the eligibility, the objection raised after the last date of nomination cannot be made a subject matter of challenge in the election petition.

- b) The sole allegation in the petition is that ineligible voters were enrolled in the electoral roll and they had voted in the election held on 26th June 2024. The allegation against the applicant is that the addition of ineligible voters was made under the undue influence of the applicant, through the Headmasters/Principals of the respective schools. However, the petition is bereft of any particulars regarding the illegal addition of voters by the concerned Headmasters/Principals. The allegations are vaguely made against the applicant. The Headmasters/Principals who are authorised to add the names to the electoral roll are not made a party to the petition.
- c) According to the petitioner, primary and pre-primary teachers were ineligible to be voters, and only secondary school teachers and above secondary school

teachers were eligible. The allegations regarding the ineligibility of the voters are based on a vague allegation that the minimum age required was not considered, and non-teaching staff were enlisted as voters. The procedure to prescribe the qualification for the teachers constituency is provided under Section 27(3) of the Representation of the People Act 1950 (**"the 1950 Act"**). The petition is filed on a misconception that primary and pre-primary teachers are excluded. The Election Commission of India issued the revised guidelines dated 5th September 2016 regarding the preparation of the electoral rolls of the Teachers Constituency. The provisions indicate that the electors must be teaching in institutions not lower in standard than that of a secondary school. The qualification is with regard to the level of the Institutions; hence, all the eligible teachers of the Institutions having a secondary section would be eligible to be added as voters. The Notification dated 8th October 1985, published by the State Government notifying the standard of the Institutions for the purpose of election of the said constituency, is misinterpreted in

the petition. Hence, the ground to challenge the election, as raised in the petition, would not constitute any cause of action.

- d) The electoral roll in the teachers constituency is finalised after certification by Headmasters/Principals, and if a discrepancy is found, the form is rejected. Hence, there is no basis for the vague allegation that there was collusion between the applicant and the concerned Headmasters/Principals for adding the names of ineligible voters. The vague allegations without any material particulars regarding any undue influence by the applicant in preparing the electoral roll, the petition would not warrant any trial.
- e) Section 30 of the 1950 Act bars the civil court's jurisdiction to adjudicate upon any question regarding the electoral roll. For the purpose of the election petition, the High Court is a civil court. In view of Section 27(4) of the 1950 Act, the provisions of Sections 15, 16, 18, 22 and 23 shall apply in relation to the teachers constituency. However, only if Section 23(3) is not

followed can it be questioned through the election petition. As per the General Administration Department guidelines dated 8th October 1985, all the teachers from the educational institutions listed in the guidelines are eligible to be added to the electoral roll. In view of the well-settled legal principles and the applicable Rules for preparing the electoral roll in the teachers constituencies, the allegations made in the election petition would not warrant any trial. Thus, the election petition is liable to be rejected at this stage.

- f) Learned senior counsel for the applicant relied upon the decision of the Hon'ble Apex Court in the case of *Indrajit Barua and Others V/s Election Commission of India and Others*¹. He submitted that the Hon'ble Apex Court has taken the view that preparing the electoral roll is not a process of election. As held by the Hon'ble Apex Court, in a suitable case, a challenge to the electoral roll for not complying with the requirements of the law may be entertained subject to the rule indicated in the decision of *N.P. Ponnuswami Vs. Returning Officer, Namakkal*

1 (1985) 4 SCC 722

Constituency². Learned senior counsel for the applicant relied upon paragraph 12 of the said decision, which referred to the view taken by the Hon'ble Apex Court in the case of ***N.P. Ponnuswami***.

- g)*** Learned senior counsel for the applicant relied upon the decision of the Hon'ble Apex Court in the case of ***Hariprasad Mulshanker Trivedi Vs. V.B. Raju and Others***³. He submitted that the Hon'ble Apex Court held that the process of finalising the electoral roll cannot be questioned in the election petition, as the same cannot be termed an election process. He also relied upon the decisions in the case of ***Samar Singh Vs. Kedar Nath alias K.N. Singh and Others***⁴ and in the case of ***B.M. Ramaswamy Vs. B.M. Krishnamurthy and Others***⁵, to support his submission that the objections to the final electoral roll pertaining to allegations regarding the preparation of the electoral roll or adding members to the electoral roll before the last date of submission of

2 1952 SCR 218

3 (1974) 3 SCC 415

4 1987 (Supp) SCC 663

5 (1963) 3 SCR 479

the nomination cannot be the subject matter of the election petition. The election petition on the sole ground of objection to the preparation of the electoral roll would not constitute any cause of action. The well-established legal principles regarding rejecting an election petition at the threshold if the petition does not constitute any cause of action, squarely apply to the present petition. Thus, the petition must be rejected at the threshold under Order VII Rule 11 of CPC.

ARGUMENTS ON BEHALF OF THE PETITIONER:

4. Learned senior counsel for the petitioner submitted as under:

- a) The petitioner has pleaded the particulars of the illegality of adding ineligible names to the electoral roll. The particulars pleaded in the petition would warrant trial. Hence, the petitioner would be entitled to lead evidence to support the allegations of adding ineligible names to the electoral roll.

- b) The Election Commission of India has issued guidelines dated 5th September 2016. Clause 1.3 provides for the eligibility of voters in the teachers constituencies. He relied upon the relevant provisions to support his contentions that the teachers of the primary and pre-primary schools are not qualified to be added as eligible voters.
- c) After the election program is declared, the candidate who subsequently decides to file a nomination is left with no remedy to challenge the electoral roll, as the election program is already declared. The objection regarding the addition of ineligible names in the voters list can be made subject matter of challenge in the election petition. As per the regulation issued by the Election Commission of India, the voters in the teachers constituencies have to be from the secondary section. The General Administration Department guidelines dated 8th October 1985 provide the list of educational institutions not lower in standard than that of a secondary school, which are notified for the purpose of election to the Maharashtra Legislative

Council from Teachers Constituencies. The list contains pre-primary, montessori, primary, etc, as eligible institutions; however, the voters would be eligible only from the secondary section.

d) Learned senior counsel for the petitioner relies upon paragraph 18 of the decision of the Hon'ble Apex Court in the case of ***Hari Prasad Mulshankar Trivedi***. He submitted that if any name is entered or deleted and there is an irregular exercise of the power, the court trying the election petition can go into the question whether there was a violation of Section 23(3) of the 1950 Act. Learned senior counsel referred to the decision in the case of ***Indrajit Barua*** and submitted that even as per the legal principles settled by the Hon'ble Apex Court, in a suitable case challenge to the electoral roll for not complying with the requirements of the law can be entertained, subject to the rule indicated in the decision of ***N.P. Ponnuswami***.

e) Learned senior counsel for the petitioner further submits that even otherwise, all the legal principles relied upon by

the learned senior counsel for the applicant are not with reference to the election of the Legislative Council. The right of appeal under Section 24 of the 1950 Act is not available in the elections of the Teachers Constituency of the Legislative Council. Thus, in the absence of any remedy to raise objections to the illegality in the preparation of the electoral roll, the petitioner cannot be deprived of raising objections by way of the election petition. The material particulars pleaded in the petition to support the allegations would warrant a trial, as sufficient cause of action arises to challenge the election of the applicant. He thus submits that the petition cannot be rejected at the threshold as contended by the applicant.

CONSIDERATION OF THE SUBMISSIONS:

5. I have perused the papers of the petition and the application and considered the rival submissions. The petition is filed to declare the election of the applicant to the Maharashtra Legislative Council from Mumbai Teachers Constituency null and void. The petitioner also prays to declare that the petitioner is duly elected. To consider the submissions

on behalf of the applicant for rejection of the petition at the threshold, it is necessary first to examine the pleadings in the petition. The pleadings in the petition can be summarised as under:

- a) The election of the applicant is void under section 100(1)(d)(iii) and 100(1)(d)(iv) of the 1951 Act. The applicant received votes that are illegal and void. In gross violation of the provisions of the Constitution of India and the 1950 and 1951 Acts and the Rules framed thereunder, and in breach of the orders and guidelines, 587 ineligible persons were registered under the applicant's influence and power. A list of 587 ineligible voters is annexed to the petition.
- b) The applicant was the Chairman of the Maharashtra State Scheduled Castes and Scheduled Tribes Commission and also the Minority Commission and worked on other important and influential posts. The applicant retired from the post of Deputy Secretary, School Education Department. The applicant is an office bearer of important educational institutions. Hence, by

taking undue advantage of the post he held in the past, the applicant influenced the registration of ineligible persons as voters. The petitioner referred to various educational institutions in the petition and contended that the applicant, through the Headmaster/Principal of those institutions, facilitated the registration of 518 voters who are working as teachers in pre-primary and primary schools and also nonteaching staff. Around 69 voters are between 18 and 25 years old, which shows that they have no requisite experience of three years. Thus, a total of 587 ineligible electors were registered in the electoral roll who voted for the applicant.

- c) Pursuant to Section 27(3)(b) of the 1950 Act, the State Government notified a list of educational institutions not lower in standard than a secondary school by notification dated 8th October 1985. As per the government circular dated 26th September 2023, a person who has been for atleast three years in the last preceding six years from 1st November 2023, been engaged in teaching in such an

institution in the State, not lower in standard than that of a secondary school, can be held eligible to vote.

d) There were a total of 15,839 voters in the said constituency, out of which 1200 voters exercised their right to vote. There were 402 invalid votes, and the remaining 11598 were considered valid. A quota of 5800 was fixed for the winning candidate. In the first round, the applicant received 3079 first-preferential votes, whereas the petitioner received 3011 first-preferential votes. Thus, there was only a difference of 68 votes between the applicant and the petitioner. In the 11th round, i.e. the second last round before declaring the result, the applicant's votes had reached to 3642, whereas the petitioner's votes reached 3434, and there was a difference of only 208 votes. Thus, if the election of the applicant is declared null and void, the petitioner, being the second-highest candidate, would be entitled to be declared elected.

6. The applicant contends that there is no allegation that illegal addition of votes was done after the last date of

nomination or declaration of the final electoral list; hence, according to the learned senior counsel for the applicant, any objection raised regarding the illegal addition of names of the electors before the last date of submitting nominations cannot be made the subject matter of an election petition. A perusal of the election petition indicates that the grounds for challenging the election are only the illegal addition of the names of ineligible electors, by illegal use of power and undue influence. Thus, it is necessary to discuss all the decisions relied upon in this case, to understand the legal position as to whether the preparation of the electoral roll is a process of an election and whether an objection to the electoral roll can be raised in an election petition.

LEGAL POSITION:

7. The Hon'ble Apex Court in the decision of *Indrajit Barua* was dealing with the challenge to the validity of the elections to the Assam Legislative assembly in a number of writ petitions filed under Article 226 of the Constitution of India in the Gauhati High Court. A more or less similar allegations were made, substantially challenging the electoral rolls and questioning the

validity of all the elections to the Legislative Assembly, and praying for the dissolution of the house. At the instance of the Election Commission, these petitions were transferred before the Hon'ble Supreme Court. It was held in paragraph 3 as under:

“3.We are of the view that once the final electoral rolls are published and elections are held on the basis of such electoral rolls, it is not open to anyone to challenge the election from any constituency or constituencies on the ground that the electoral rolls were defective. That is not a ground available for challenging an election under Section 100 of the Representation of the People Act, 1951. The finality of the electoral rolls cannot be assailed in a proceeding challenging the validity of an election held on the basis of such electoral rolls vide *Kabul Singh v. Kundan Singh* [(1969) 2 SCC 452 : (1970) 1 SCR 845 : 42 ELR 325] . *Article 329(b) in our opinion clearly bars any writ petition challenging the impugned elections on the ground that the electoral rolls of 1979 on the basis of which the impugned elections were held were invalid.*”

(emphasis applied by me)

8. In the decision of *Indrajit Barua*, while dealing with the point as to whether preparation and publication of the electoral

rolls are a part of the process of election within the meaning of Article 329(b) of the Constitution, the Hon'ble Apex Court referred to the decision in *N.P.Ponnuswami*, where the Apex Court had to decide the amplitude of the term 'election'. The relevant observations from the judgment in the decision of *N.P.Ponnuswami*, was referred to and quoted in paragraph 12 as under:

“..... The discussion in this passage makes it clear that the word 'election' can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.”

9. The Hon'ble Apex Court in the decision of *Indrajit Barua*, held as under in paragraph 12,

“..... *We are not prepared to take the view that preparation of electoral rolls is also a process of election.*

We find support for our view from the observations of Chandrachud, C.J. in *Lakshmi Charan Sen case* [AIR 1957 SC 304 : 1957 SCR 68 : (1956) 12 ELR 443] that “it may be difficult, consistently with that view, to hold that preparation and revision of electoral roll, is a part of 'election' within the meaning of Article 329(b)”. *In a suitable case challenge to the electoral roll for not*

complying with the requirements of the law may be entertained subject to the rule indicated in Ponnuswami case [(1985) 4 SCC 689]. But the election of a candidate is not open to challenge on the score of the electoral roll being defective. Holding the election to the Legislature and holding them according to law are both matters of paramount importance. Such elections have to be held also in accordance with a time bound programme contemplated in the Constitution and the Act. The proviso added in Section 22(2) of the Act of 1950 is intended to extend cover to the electoral rolls in eventualities which otherwise might have interfered with the smooth working of the programme. These are the reasons for which we came to the conclusion that the electoral roll of 1979 had not been vitiated and was not open to be attacked as invalid.”

(emphasis applied by me)

10. In the case of *N.P. Ponnuswami*, the appellant, thereupon moved the High Court under Article 226 of the Constitution, praying for a writ of certiorari to quash the order of the Returning Officer rejecting his nomination paper and to direct the Returning Officer to include his name in the list of valid nominations to be published. The High Court dismissed the appellant's application on the ground that it had no

jurisdiction to interfere with the order of the Returning Officer by reason of the provisions of Article 329(b) of the Constitution. The Hon'ble Apex Court held in paragraph 25 as under:

"25. The conclusions which I have arrived at may be summed up briefly as follows:

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a Special Tribunal by means of an election petition and not be

made the subject of a dispute before any court while the election is in progress.”

(emphasis applied by me)

11. Thus, considering the well-established legal principles as discussed above, it cannot be said that there is any absolute legal proposition that a challenge to the electoral roll cannot be questioned in an election petition. There is no express bar to raising a challenge to the electoral roll in an election petition. As held by the Hon'ble Apex Court in the decision of *Indrajit Barua*, in a suitable case, a challenge to the electoral roll for not complying with the requirements of the law may be entertained subject to the rule indicated in the *N.P. Ponnuswami's* case. Thus, in view of the legal principles settled in the decision of *N.P. Ponnuswami's* case and *Indrajit Barua's* case, as referred to in the above paragraphs; if any irregularities are alleged to have been committed in preparation of the electoral roll for not complying with the requirements of the law, the person affected can question it by means of an election petition, if it would have the effect of vitiating the “election”.

12. The Hon'ble Apex Court in the decision of ***B. M. Ramaswamy*** was dealing with the dispute in an election petition filed under Section 13 of the Mysore Village Panchayats and Local Boards Act 1959. The dispute was with respect to the election to the Village Panchayat in the State of Mysore. The objection was raised that the appellant therein was not a resident of the constituency and was not qualified to contest the election from that constituency. The Hon'ble Apex Court held that the Electoral Registration Officer had jurisdiction to entertain the application to include the appellant's name in the electoral roll and take such action as he deems fit. It is observed that the non-compliance with the procedure prescribed does not affect his jurisdiction, though it may render his action illegal and such non-compliance cannot make the officer's act non est, though his order may be liable to be set aside in appeal or by resorting to any other appropriate remedy. Considering the provisions of the said local Act, it is observed that a special jurisdiction on the Munsif to set aside an election is provided, and he can do so only for the reasons mentioned in Section 13(3) of the Act. It is held that there is no provision in the said Act which enables the High Court to set

aside the election on the ground that though the name of a candidate is in the list, it had been included therein illegally. Thus, the legal principles settled in this decision would not be relevant to decide the rival contentions raised in the present case.

13. The Hon'ble Apex Court in the decision of ***Hari Prasad Mulshankar Trivedi***, was dealing with the challenge to the election of the respondents therein as members of the Council of States from the State of Gujarat. The challenge was on the ground that their names had been illegally entered in the electoral roll and they were not ordinary resident of the constituency and were not electors within the meaning of Section 2(1)(e) of the 1951 Act. The Hon'ble Apex Court considered various earlier decisions of the Apex Court, including the principles settled in the decision of ***B.M. Ramaswamy***. It was held in paragraph 25 that the question whether a person whose name is entered in the electoral roll is qualified under the Constitution and whether he suffers from any of the disqualifications specified in Section 16 of the 1950 Act can always be gone into by the Court trying an election

petition. It is held that the electoral roll is never conclusive or final in respect of these matters. With reference to facts before the Apex Court, it was observed that the only question was whether the ground taken in the election petition that since the respondents were not ordinarily resident in any of the Parliamentary constituencies of Gujarat, they had not fulfilled one of the conditions necessary to be satisfied for registration in the electoral roll, can be gone into by the High Court in trying an election petition. With reference to the question raised in the facts of that case, the Apex Court held that a wrong decision on a question of ordinary residence for the purpose of entering a person's name in the electoral roll should not be treated as a jurisdictional error which can be judicially reviewed either in a civil court or before an election tribunal.

14. Thus, in view of the well-settled legal principles as discussed above, there is no express ouster of the Court trying an election petition to go into the question of challenge to the illegal addition of ineligible names in the electoral roll. Section 27(4) of the 1950 Act provides that the provisions of Sections 15, 16, 18, 21, 22 and 23 shall apply to the Teachers

Constituencies. Hence, in the present case, the right of appeal under Section 24 of the 1950 Act is not available in the elections of the Teachers Constituency of the Legislative Council to challenge a breach of Section 23 of the 1950 Act. Thus, in the absence of any remedy to raise objections to the illegality in preparing the electoral roll, the affected person cannot be deprived of raising objections by way of the election petition if the challenge materially affects the election result.

15. The Hon'ble Apex Court in the decision of *Samar Singh* was dealing with the challenge to the High Court's Order rejecting the election petition under Order VII Rule 11 of CPC with reference to the appellant's contention that the result of the election was materially affected due to the improper nomination paper. The legal principles settled in this decision are not relevant to the controversy involved in the facts of the present case.

CONCLUSIONS:

16. To sum up the arguments on behalf of the applicant, it is submitted that the preparation of the electoral roll is not a process of election and thus cannot be challenged in an

election petition. It is further submitted that, irrespective of the eligibility, the only exception is that if any name is allegedly added after the last date of submitting nominations, the objection to the electoral roll can be made subject matter of challenge in an election petition. It is also submitted that only if Section 23(3) of the 1950 Act is breached, can it be questioned in an election petition. It is submitted that the allegations regarding the ineligibility of the voters are based on vague allegations and thus would not warrant any trial.

17. In response, according to the learned senior counsel for the petitioner, if any name is entered or deleted and there is an irregular exercise of the power, the court trying the election petition can go into question whether there was a violation of Section 23(3) of the 1950 Act. He submitted that in view of Section 27(4) of the 1950 Act, Sections 15, 16, 18, 21, 22 and 23 shall apply to the Teachers Constituency. Hence, according to the learned senior counsel for the petitioner, the remedy of filing an appeal under Section 24 was not available to the petitioner; hence, the challenge to the electoral roll for not

complying with the requirements of the law can be entertained in this election petition.

18. In view of the legal principles settled in the decision of *Hari Prasad Mulshanker Trivedi* and *Indrajit Barua*, the objections raised in the election petition on the illegal addition of the ineligible electors can be tried in the election petition. In view of the well-settled legal principles as discussed in the above paragraphs, the word 'election' has been used with reference to the entire process, which consists of several stages having an important bearing on the election result. Thus, I do not find any substance in the arguments raised on behalf of the applicant that the objection to the electoral roll raised in the present case is not a process of election and therefore cannot be challenged in the election petition. In the present case, the allegations in the petition are based on material particulars that are reproduced in the above paragraphs. Thus, the pleadings in the election petition would warrant a trial, as sufficient cause of action arises to challenge the election of the applicant, in as much as, if the allegations are proved, it will materially affect the election result. Hence,

the petition cannot be rejected at the threshold as contended by the applicant.

19. The rival submissions made on behalf of both parties on the merits of the objections regarding eligibility are referred in the above paragraphs. However, it is not necessary to examine those submissions at this stage while deciding the prayer for rejection of the election petition under Order VII Rule 11 of CPC.

20. In view of the legal position as discussed in the above paragraphs, it cannot be said that objections raised to the electoral roll cannot be made the subject matter of a challenge in the election petition. As referred to in the above paragraphs, the petitioner has stated the material particulars and contended that there was a difference of only 208 votes. The petitioner has further pleaded the particulars about the ineligible voters and stated that 587 ineligible electors who voted for the applicant were illegally registered in the electoral roll. The petitioner thus contended that if the election of respondent no.1 is declared null and void, the petitioner, being the second highest candidate, would be entitled to be declared elected. As

summarised in the above paragraphs, the pleadings in the petition indicate sufficient material particulars regarding the objections raised to the alleged illegal addition of the ineligible persons as electors. The averments, if proved, will materially affect the election result. Thus, the material particulars pleaded in the petition would constitute a sufficient cause of action that warrants a trial. Hence, the election petition cannot be rejected at the threshold under Order VII Rule 11 of CPC.

21. For the reasons recorded above, the Interim Application No. 8 of 2024 is dismissed.

(GAURI GODSE, J.)